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SAN DIEGO, CALIFORNIA 92101-7025
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Attorneys for *Specially Appearing* Defendant HARRAH'S ENTERTAINMENT, INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JAMES M. KINDER, Plaintiff, v. NATIONWIDE RECOVERY SYSTEMS, LTD., Defendants.	CASE NO. 07-CV-2132-DMS (AJB) Judge: Hon. Dana M. Sabraw Mag. Judge: Hon. Anthony J. Battaglia **DECLARATION OF RONALD R. GIUSSO IN SUPPORT OF OPPOSITION OF *SPECIALLY APPEARING* DEFENDANT HARRAH'S ENTERTAINMENT, INC. TO NATIONWIDE RECOVERY SYSTEMS, LTD.'S MOTION FOR CONSOLIDATION OF ACTIONS** ACCOMPANYING PLEADINGS: NOTICE; OPPOSITION Date: February 8, 2008 Time: 1:30 p.m. Courtroom: 10

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I, Ronald R. Giusso, declare:

1. I am an attorney at law licensed to practice before all courts of the State of California, and I am employed by the law firm of Shea Stokes Roberts & Wagner, ALC, counsel of record for *Specially Appearing* Defendant HARRAH'S ENTERTAINMENT, INC.

2. I have personal knowledge of each of the facts set forth in this declaration and could and would competently testify thereto.

3. Attached hereto as Exhibit A is a true and correct copy of the complaint filed in the action entitled Kinder v. Harrah's Entertainment, Inc., Case Number 31-2007-00076114-CU-MC-CTL filed in San Diego Superior Court on October 7, 2007 and removed to the above entitled Court on November 21, 2007.

4. Attached hereto as Exhibit B is a true and correct copy of the Declaration of Michael E. Kostrinsky previously filed with this Court in Support of Opposition to Plaintiff's Motion for Leave to File First Amended Complaint.

5. *Specially Appearing* Defendants will move to have KINDER deemed a vexatious litigant in District Court. In 2003, KINDER was determined by the San Diego County Superior Court to be a vexatious litigant in case number SC137653.

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6. My office has reviewed the over 360 lawsuits which KINDER has filed in San Diego in the past seven years, many of which were related to TCPA violations involving his 999-9999 telephone number.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 25th day of January 2008 at San Diego, California.

s/Ronald R. Giusso
Ronald R. Giusso

EXHIBIT A

Chad Austin, Esq. SBN 235457
3129 India Street
San Diego, CA 92103-6014
Telephone: (619) 297-8888
Facsimile: (619) 295-1401

Attorney for Plaintiff JAMES M. KINDER, an individual

FILED
CIVIL BUSINESS OFFICE 19
CENTRAL DIVISION

07 OCT -2 PM 4:32

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

JAMES M. KINDER, Plaintiff, v. HARRAH'S ENTERTAINMENT, Inc. and DOES 1 through 100, inclusive, Defendants.	CASE NO. 37-2007-00076114-CU-MC-CTL **COMPLAINT FOR DAMAGES, INCLUDING PUNITIVE DAMAGES, INTEREST AND ATTORNEY'S FEES, AND FOR INJUNCTIVE RELIEF** **Violations of Telephone Consumer Protection Act of 1991** **Violations of California Civil Code § 1770 (a) (22) (A)** **Trespass to Chattel** **Unfair Business Practices**

COMES NOW Plaintiff JAMES M. KINDER (hereinafter referred to as "Plaintiff") who alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff is, and at all times herein mentioned was, a resident of the County of San Diego, State of California.

2. Defendant HARRAH'S ENTERTAINMENT, Inc. (hereinafter referred to as "Defendant") was at all times herein mentioned a Delaware corporation, doing business in the County of San Diego, State of California.

3. Plaintiff is unaware of the true names and capacities of defendants sued herein as DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.

Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff's damages as herein alleged were proximately caused by their conduct.

4. At all times herein mentioned each defendant was the partner, agent and employee of each co-defendant herein and was at all times acting within the scope of such partnership, agency and employment and each defendant ratified the conduct of each co-defendant herein.

FIRST CAUSE OF ACTION
[Violation of Telephone Consumer Protection Act of 1991]

5. Plaintiff realleges paragraphs 1 through 4 above and incorporates them herein by reference.

6. Plaintiff is bringing this action pursuant to the provisions of the Telephone Consumer Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 – "TCPA").

7. Subdivision (b) (1) (A) (iii) of Section 227 of Title 47 of the United States Code makes it unlawful for any person to "Make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice...to any telephone number assigned to a paging service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call."

8. Defendants have been calling Plaintiff's number assigned to a paging service, using an artificial or prerecorded voice, without Plaintiff's express permission. These calls were not made for any emergency purpose, nor were these calls exempt under subdivision (c) of section 64.1200 of title 47 of the Code of Federal Regulations.

9. Subdivision (b)(3) of section 227 of title 47 of the United States Code permits a private right of action in state court for violations of 47 U.S.C. §227 (b) (1) (A) (iii). Plaintiff may obtain relief in the form of injunctive relief, or Plaintiff may recover $500.00 for each violation, or both. If the court finds that defendants' violations were willful or knowing, it may,

in its discretion, award up to three times that amount.

SECOND CAUSE OF ACTION
[Violation(s) of California Civil Code § 1770 (a) (22) (A)]

10. Plaintiff realleges paragraphs 1 through 9 above and incorporates them herein by reference.

11. California Civil Code § 1770 (a) (22) (A) requires that all recorded messages disseminated within the state be introduced by a live, natural voice giving the name of the entity calling, the name of the entity being represented, an address or phone number for that entity, and asking permission to play the recording. Defendant's illegal prerecorded telemarketing calls to Plaintiff failed to comply with this requirement.

12. As a proximate result of defendants' violation of Civil Code section 1770, plaintiff has suffered and continues to suffer damages in an amount not yet ascertained, to be proven at trial.

13. Civil Code section 1780 (a) (2) provides for an injunction against future conduct in violation of Civil Code section 1770.

14. Civil Code section 1780 (a) (4) provides for an award of punitive damages for violations of Civil Code section 1770.

15. Civil Code section 1780 (d) provides for an award of attorneys fees for plaintiffs harmed by California Civil Code §1770 (a) (22) (A) violations.

THIRD CAUSE OF ACTION
[Trespass to Chattel]

16. Plaintiff realleges paragraphs 1 through 15 above and incorporates them herein by reference.

17. The conduct by defendants complained of herein, namely calling Plaintiff's number assigned to a paging service, using an artificial or prerecorded voice, without Plaintiff's express permission, constitutes an electronic trespass to chattel.

18. At no time did Plaintiff consent to this trespass.

19. As a proximate result of these intrusions, Plaintiff suffered damage in an amount according to proof.

20. In making the illegal calls described above, defendants were guilty of oppression and malice, in that defendants made said calls with the intent to vex, injure, or annoy Plaintiff or with a willful and conscious disregard of Plaintiff's rights. Plaintiff therefore seeks an award of punitive damages.

FOURTH CAUSE OF ACTION
[Engaging in Unfair Business Practices]

21. Plaintiff realleges paragraphs 1 through 20 above and incorporates them herein by reference.

22. Because these telephone calls violate federal statutes, they are unlawful business practices within the meaning of section 17200 of the Business and Professions Code.

23. Section 17203 of the Business and Professions Code entitles Plaintiff to an injunction enjoining defendants from engaging in unfair or unlawful business practices.

WHEREFORE Plaintiff prays for judgment against defendants, and each of them, as follows:

On the FIRST CAUSE OF ACTION:

1. For an award of $500.00 for each violation of 47 U.S.C. §227;

2. For an award of $1,500.00 for each such violation found to have been willful;

On the SECOND CAUSE OF ACTION:

3. For compensatory damages according to proof;

4. For preliminary and permanent injunctions, enjoining Defendants, and each of them, from engaging in activity in violation of California Civil Code §1770 (a) (22) (A);

5 For punitive damages;

6. For attorneys fees;

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On the THIRD CAUSE OF ACTION:

7. For compensatory damages according to proof;

8. For punitive damages;

On the FOURTH CAUSE OF ACTION:

9. For preliminary and permanent injunctions, enjoining Defendants, and each of them, from engaging in unfair or unlawful business practices pursuant to section 17203 of the Business and Professions Code;

On ALL CAUSES OF ACTION:

10. For attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

11. For costs of suit herein incurred; and

12. For such further relief as the Court deems proper.

Dated: October 2, 2007

By: [signature]
CHAD AUSTIN, Esq.
Attorney for Plaintiff JAMES M. KINDER

SUM. ɔNS
(CITACION JUDICIAL)

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

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CIVIL BUSINESS OFFICE 19
CENTRAL DIVISION

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CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
Harrah's Entertainment, Inc. and DOES 1 through 100, inclusive.

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
James M. Kinder

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
San Diego Superior Court
330 W. Broadway
San Diego, CA 92101
Central Division

CASE NUMBER:
(Número del Caso): 37-2007-00076114-CU-MC-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Chad Austin, Esq. 619-297-8888 F 619-295-1401
3129 India St.
San Diego, CA 92103-6014
SBN 235457

DATE: OCT 0 2 2007 *(Fecha)* Clerk, by C Beutler C. Beutler *(Secretario)*, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

SUPERIOR COURT · SAN DIEGO COUNTY

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*
3. ☐ on behalf of *(specify):*

under:
- ☐ CCP 416.10 (corporation)
- ☐ CCP 416.20 (defunct corporation)
- ☐ CCP 416.40 (association or partnership)
- ☐ CCP 416.60 (minor)
- ☐ CCP 416.70 (conservatee)
- ☐ CCP 416.90 (authorized person)
- ☐ other *(specify):*

4. ☐ by personal delivery on *(date):*

Page 1 of 1

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Chad Austin, Esq.
3129 India St.
San Diego, CA 92103-6014
SBN 235457

TELEPHONE NO.: 619-297-8888 FAX NO.: 619-295-1401
ATTORNEY FOR (Name): James M. Kinder

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego
STREET ADDRESS: 330 W. Broadway
MAILING ADDRESS: same
CITY AND ZIP CODE: San Diego, CA 92101
BRANCH NAME: Central Division

CASE NAME: Kinder v. Harrah's Entertainment, Inc.

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CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

CIVIL CASE COVER SHEET

[X] Unlimited (Amount demanded exceeds $25,000) [ ] Limited (Amount demanded is $25,000 or less)

Complex Case Designation
[ ] Counter [ ] Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: 37-2007-00076114-CU-MC-CTL
JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort
- [ ] Auto (22)
- [ ] Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- [ ] Asbestos (04)
- [ ] Product liability (24)
- [ ] Medical malpractice (45)
- [ ] Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- [ ] Business tort/unfair business practice (07)
- [ ] Civil rights (08)
- [ ] Defamation (13)
- [ ] Fraud (16)
- [ ] Intellectual property (19)
- [ ] Professional negligence (25)
- [ ] Other non-PI/PD/WD tort (35)

Employment
- [ ] Wrongful termination (36)
- [ ] Other employment (15)

Contract
- [ ] Breach of contract/warranty (06)
- [ ] Rule 3.740 collections (09)
- [ ] Other collections (09)
- [ ] Insurance coverage (18)
- [ ] Other contract (37)

Real Property
- [ ] Eminent domain/Inverse condemnation (14)
- [ ] Wrongful eviction (33)
- [ ] Other real property (26)

Unlawful Detainer
- [ ] Commercial (31)
- [ ] Residential (32)
- [ ] Drugs (38)

Judicial Review
- [ ] Asset forfeiture (05)
- [ ] Petition re: arbitration award (11)
- [ ] Writ of mandate (02)
- [ ] Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
- [ ] Antitrust/Trade regulation (03)
- [ ] Construction defect (10)
- [ ] Mass tort (40)
- [ ] Securities litigation (28)
- [ ] Environmental/Toxic tort (30)
- [ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- [ ] Enforcement of judgment (20)

Miscellaneous Civil Complaint
- [ ] RICO (27)
- [X] Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
- [ ] Partnership and corporate governance (21)
- [ ] Other petition *(not specified above)* (43)

2. This case [ ] is [X] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. [ ] Large number of separately represented parties
   b. [ ] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. [ ] Substantial amount of documentary evidence
   d. [ ] Large number of witnesses
   e. [ ] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. [ ] Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply)*: a. [X] monetary b. [X] nonmonetary; declaratory or injunctive relief c. [X] punitive
4. Number of causes of action *(specify)*: 4
5. This case [ ] is [X] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: 10-02-07
Chad Austin, Esq.
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

EXHIBIT B

MARIA C. ROBERTS, State Bar No. 137907
RONALD R. GIUSSO, State Bar No. 184483
VICTORIA G. PURUGANAN, State Bar No. 239257
SHEA STOKES ROBERTS & WAGNER, ALC
A LAW CORPORATION
510 MARKET STREET, THIRD FLOOR
SAN DIEGO, CALIFORNIA 92101-7025
TELEPHONE: (619) 232-4261
FACSIMILE: (619) 232-4840

Attorneys for *Specially Appearing* Defendant HARRAH'S ENTERTAINMENT, INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JAMES M. KINDER,

Plaintiff,

vs.

HARRAH'S ENTERTAINMENT, INC. and DOES 1 through 100, inclusive,

Defendants.

CASE NO. 07 CV 2226 DMS (AJB)

Judge: Hon. Dana M. Sabraw
Mag. Judge: Hon. Anthony J. Battaglia

DECLARATION OF MICHAEL E. KOSTRINSKY IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

Date: January 25, 2008
Time: 1:30 p.m.
Courtroom: 10

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I, Michael E. Kostrinsky, declare:

1. I am the Chief Litigation Officer for Harrah's Operating Company, Inc. As such, I have personal knowledge of Harrah's Operating Company, Inc., its holdings, and those of its affiliates and Harrah's Entertainment, Inc. I make this declaration based on that knowledge.

2. *Specially Appearing* Defendant Harrah's Entertainment, Inc. is a Delaware corporation, headquartered in Las Vegas, Nevada. It does not have offices in California; does not own property in California; does not have employees in California; and, does not conduct business in California. *Specially Appearing* Defendant Harrah's Entertainment, Inc. does not make telemarketing or other telephone calls to individuals in California using an automatic telephone dialing system, artificial or prerecorded voice, or otherwise.

3. Harrah's Operating Company, Inc. is a Delaware corporation and is not headquartered in California. It does not have offices in California; does not own property in California; does not have employees in California; and, does not conduct business in California. Harrah's Marketing Services Corporation is a foreign corporation; is not headquartered in California; and does not own property in California. Harrah's License Company, LLC is a foreign company and is not headquartered in California. It does not have offices in California; does not own property in California; does not have employees in California; and, does not conduct business in California. Harrah's Laughlin, Inc. is a foreign corporation and is not headquartered in California. It does not have offices in California; does not own property in California; does not have employees in California; and, does not conduct business in California. And, HBR Realty Company, Inc. is a foreign corporation and is not headquartered in California. It does not have offices in California; does not own property in California; does not have employees in California; and, does not conduct business in California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 11 day of January 2008, at Las Vegas, Nevada.

Michael E. Kostrinsky